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1 THE COURT: Have we done anything on this one?

2 MS. STEINBACK: We have not. This is our first
3 pretrial conference, Judge, and so --

4 THE COURT: So, Pi -- What is it?

00:00 5 MS. STEINBACK: Pikett.

6 THE COURT: Pikett. The same Pikett.

7 MS. STEINBACK: The same Pikett. Exactly.

8 THE COURT: Everybody else different.

9 MS. STEINBACK: Everybody else different.

00:00 10 THE COURT: All right. Who was Sheriff when -- I
11 don't know how to -- Do these two sheriffs overlap the whole
12 time period?

13 MS. STEINBACK: Your Honor, I'm not entirely sure.

14 MR. PRICE: I can answer that, Judge. At the time
00:00 15 of the arrest Lacy Rogers with the San Jacinto County
16 Sheriff -- he left office at the end of 2008 and at that
17 time the arrest had already been done. The investigation
18 had pretty much been completed. So, James Walters came into
19 office on July 1st of 2009, and he really had nothing to do
00:01 20 with all of the investigative work and the arrest had taken
21 place before he took office.

22 THE COURT: Is Lenard Johnson still with the
23 sheriff's department?

24 MR. PRICE: He is not, Your Honor.

00:02 25 THE COURT: And do you know where he is?

1 MR. PRICE: Yes. And I represent him. He's with
2 another law enforcement agency now.

3 THE COURT: What do you think Johnson did?

4 MS. STEINBACK: Well, Your Honor, just briefly to
00:03 5 bring you up to speed on what the allegations are in the
6 complaint:

7 There was a man named "Mr. Murray" found dead
8 in August of 2004. He was a janitor at an area pool. And
9 an investigation was conducted by the San Jacinto County
00:03 10 Sheriff's Office and the Texas Rangers who have been named
11 in this complaint.

12 Within approximately a week or so our client,
13 the Plaintiff, Richard Winfrey, Jr., was identified as a
14 person of interest, and despite the fact that there was no
00:03 15 physical evidence tying him to the crime, somehow it was
16 determined that he was one of the prime suspects.

17 And, so, Keith Pikett -- Sheriff Keith Pikett
18 was called in to conduct a dog scent lineup. The dog scent
19 lineup was conducted and surprisingly identified Richard
00:04 20 Winfrey, Jr., as having been one of the perpetrators. A
21 subsequent dog tracking or trailing was conducted where the
22 dogs were scented with a suspect's scent and then they
23 wandered around the community until they arrived at the
24 suspect's house.

00:04 25 During that dog scent trailing they again

1 arrived at Richard Winfrey, Jr.'s home but, it was later
2 discovered, with someone else's scent; it was not Richard
3 Winfrey, Jr., or anyone who lived in his home. So, that was
4 considered an accident but, nonetheless, used during the
00:04 5 arrest of the investigation.

6 We also allege that there was a jailhouse
7 snitch who was coerced into identifying Richard Winfrey,
8 Jr., as one of the perpetrators of the crime. And two and a
9 half years after the crime was committed Richard Winfrey,
00:04 10 Jr., was arrested.

11 THE COURT: Well, tell me about the snitch. You
12 haven't sued him.

13 MS. STEINBACK: We have not sued him because he
14 claimed he was coerced by the investigators. He later
00:05 15 recanted --

16 THE COURT: So, if you're coerced you falsely
17 accuse somebody? That's not the way I understand it works.
18 You get coerced.

19 MS. STEINBACK: Certainly.

00:07 20 (Brief recess)

21 THE COURT: Okay. When did the snitch come clean?

22 MS. STEINBACK: I don't know, Your Honor. I'd have
23 to check on that, but the snitch recanted his testimony.
24 And I don't know. I would have to look. I'm not for sure.
00:08 25 It was prior to the culmination of the investigation,

1 because then there was another jailhouse snitch who came
2 forward, but I will have to check on the date for you.

3 THE COURT: Were there other suspects? I mean,
4 obviously, there was Winfrey and at least another person
00:08 5 because there was the second scent.

6 MR. PRICE: Judge, there's Richard Winfrey, Sr.,
7 Richard Winfrey, Jr., and Megan Winfrey. Senior is the
8 father of Junior and Megan. Senior and Megan were both
9 convicted of capital murder. And I know that Senior's case
00:09 10 was appealed and upheld by the court of appeals. Richard,
11 Jr., the Plaintiff in this case, was determined through the
12 investigation to be a co-conspirator and actually imbedded
13 in the murder itself. The evidence was placed before a
14 grand jury and the grand jury indicted him. He was tried.

00:09 15 The allegation about a snitch -- and I know we
16 don't want to argue the facts here --

17 MS. STEINBACK: Let me just say he had a five-day
18 jury trial and was acquitted in 13 minutes of the charges.
19 So, just for sake of --

00:09 20 THE COURT: But that's a good thing, isn't it?

21 MS. STEINBACK: Yeah. Which is a great thing.
22 Absolutely.

23 THE COURT: They'll rescind that if you want.

24 MS. STEINBACK: No. No. I just wanted to make
00:10 25 clear that the two other co-conspirators -- alleged

1 co-conspirators were convicted.

2 THE COURT: Well, this is a stupid question because
3 it's a murder, but what's the reason for the murder?

4 MR. PRICE: There was a witness who overheard Megan
00:10 5 Winfrey talking to this gentleman. She was a minor at the
6 time. He was a janitor at the high school, Mr. Burr. He
7 was a -- I don't know what the politically correct -- he was
8 a slow intellectual person. But he was working as a janitor
9 there and a witness overheard her -- my understanding --
00:10 10 that overheard her say, "Go up to him and put an arm around
11 him and say, 'When are you going to take me out and spend
12 some of that money you got hidden at your house?'" And the
13 determination was that they went there for the purpose of
14 committing a robbery and, apparently, there was some
00:11 15 evidence that --

16 THE COURT: Okay. Just, ordinarily, janitors -- I
17 mean, they get caught in the -- You know, the apparent theme
18 of the prosecution was that they thought he had money from
19 somewhere.

00:11 20 MR. PRICE: Let me point out one other problem,
21 Judge, that I have -- and this is raised in our pleadings --
22 is that after Junior -- or they call him "Little Richard" --
23 was acquitted he moved for an expunction of his record and
24 the expunction was ordered.

00:11 25 My clients don't have any records anymore.

1 They were redacted or destroyed. And, so, there, was a --
2 my understanding is there is a consolidated police report
3 that developed in the investigation of the murder. That
4 record contains information pertaining to the investigation
00:12 5 of Senior, Megan and Junior and that those portions of that
6 record that pertain to Junior have been expunged. And we're
7 a little bit concerned about the offensive use of the
8 expunction in this context since Mr. --

9 THE COURT: She hasn't done anything offensive in
00:12 10 cases I have had her in.

11 MR. PRICE: I am talking about the criminal lawyer,
12 not this lady sitting here, Judge, who has had the record
13 expunged.

14 MS. STEINBACK: And we actually discussed this a
00:12 15 few days ago when counsel met via teleconference to discuss
16 this.

17 You know, just as an initial matter, this was
18 an investigation into several suspects. It was a
19 consolidated investigation. So, you know, while I don't
00:13 20 know what records Mr. Price is talking about, because there
21 were other co-conspirators in this, I have to believe that
22 there is some records that were not destroyed regarding the
23 investigation into this case.

24 MR. PRICE: No. What I told you was that to the
00:13 25 extent that there are documents --

1 THE COURT: An arrest expunction doesn't eliminate
2 the investigation file and all that stuff.

3 MR. PRICE: Judge, we attached a copy of the order
4 of expunction to our answer and -- what I can tell you,
00:13 5 Judge, is that -- I can tell you what the San Jacinto County
6 Sheriff's Department did. They received the order and in
7 their attempt to comply with it what they did was if they
8 found a document that pertains solely to Little Richard it
9 was destroyed. If they found a record, a document, that had
00:14 10 information that contains just his name but it also
11 pertained to Big Richard or Megan they went through and they
12 took a marks-a-lot and blacked out information pertaining to
13 Little Richard. That's what they did to try to comply with
14 the rule.

00:14 15 MS. STEINBACK: Judge, just on that -- because,
16 actually, I appreciate your providing this expunction
17 order -- that wasn't what the order said to do, and it's now
18 actually an area of inquiry that we would like to
19 investigate further during discovery because -- and, as we
00:14 20 clarified with the clerk's office, this order didn't direct
21 the destruction of documents relating to the investigation
22 of this case.

23 First of all, as I already said, it was an
24 investigation into several suspects, co-conspirators, but,
00:14 25 in addition, just looking closely at Page 10 of 13, it

1 orders the Texas Department of Public Safety to notify any
2 central federal depository of the order and then tell that
3 central federal depository or any private entities who
4 received information from it to either return information to
00:15 5 the court or destroy that information. However, for the
6 remaining agencies, including the state depositories and the
7 other agencies listed here, it says that to the extent that
8 they're going to obliterate it -- and that's only removing
9 those documents that's impracticable -- they should
00:15 10 obliterate all portions of the record or file that
11 identify -- and all in caps -- Richard Lynn Winfrey, Jr.,
12 and notify the court of any such action.

13 So, you know, as a kind of common sense
14 thinking of an expunction goes, the purpose of an expunction
00:15 15 is not to obliterate from the face of the earth any record
16 relating to an investigation. It's for the sake of allowing
17 the person -- in this case Richard Winfrey, Jr. -- to be
18 able to apply for a job without having this murder
19 conviction on his record.

00:16 20 THE COURT: When I was a state judge I had to hold
21 the State Board of Pardons and Paroles in contempt because
22 they had three files and they were responding to the
23 expunction orders by eliminating it from the record of
24 arrests in one file and then using the other two when they
00:16 25 wanted to check things. And I told them to stop it and they

1 didn't. Despite my legendary equanimity, I was irritated.

2 MR. PRICE: Well, I am trying to be candid with the
3 Court as to what happened.

4 THE COURT: Well, what we need, first, is what San
00:16 5 Jacinto County has. Period. And that would include
6 correspondence in response to this order to other agencies
7 or whatever it did, but, ordinarily, you just address the
8 DPS and the NCIC databases and, bing, it goes off.

9 MR. PRICE: Can I ask a point of clarification,
00:17 10 Judge, and just for some further background? The criminal
11 district attorney who prosecuted the case on behalf of the
12 state was Mr. Bill Burnet, who passed away on June 1st. His
13 office is a -- I haven't fully researched this, Judge, but I
14 think that the criminal district attorney is a different
00:17 15 jural entity than San Jacinto County.

16 THE COURT: The DA has -- they're state officers,
17 just like the judge.

18 MR. PRICE: And, so, what I understand from talking
19 to --

00:17 20 THE COURT: The county is obliged to supply
21 suitable rooms.

22 MR. PRICE: So, what happened was that the
23 documents that San Jacinto County Sheriff's Office had, they
24 were turned over to the district attorney as a part of the
00:18 25 trial of the case. The only thing that I am aware of -- and

1 I have tried to be very diligent --

2 THE COURT: Who is the DA now?

3 MR. PRICE: He is a first assistant, Jonathan Petix
4 who is acting as criminal district attorney until the office
00:18 5 is filled. My understanding is that Mr. Petix, because the
6 district attorney's office was also included in the order,
7 did a similar thing, that they -- Well, I don't want to
8 speak for Mr. Petix. I know that they either destroyed the
9 documents that dealt solely with Junior and redacted
00:19 10 documents that had his name in it that were otherwise -- and
11 whatever they maintained they returned to the district clerk
12 pursuant to the order and that all -- that the trial record,
13 the district attorney's file and all the trial evidence is
14 under seal at the district clerk's office under order of
00:19 15 Judge Trapp.

16 THE COURT: Good. But what there is that is in
17 that file that pertains to Little Richard I have no idea.
18 It's not available to me.

19 Were they tried separately?

00:19 20 MR. PRICE: Yes. There were three separate trials.

21 MS. STEINBACK: Three separate trials.

22 THE COURT: So, his trial record should be mostly
23 about him. Or she'd argue it wasn't about anybody.

24 MR. MORSE: Judge, I think we should also point out
00:20 25 the other two defendants who were convicted and there was --

1 I think the court of appeals affirmed -- but the court of
2 criminal appeals has granted a petition for discretionary
3 review on Senior's case is my understanding; so, they have
4 taken that case and it's before them now.

00:20 5 MR. PRICE: I believe that's right, Judge. I don't
6 know about Megan. There is a published opinion on the
7 appeal of Senior's trial.

8 THE COURT: Okay. But we just have to go ahead.
9 They're obviously not going to do anything about Junior's
00:20 10 case. It's over. So, what we need --

11 Do you need anything out of the trial record?

12 MS. STEINBACK: We'd love everything we can get out
13 of the trial record. And, Judge, we do have some documents
14 that were provided to us by Junior's criminal defense
00:21 15 attorney and, you know, we would, of course --

16 THE COURT: Who is that?

17 MS. STEINBACK: Her name is Shirley Baccus Lobel.
18 So, you know, to the extent that the trial record is
19 deficient in any way or San Jacinto County records are
00:21 20 deficient in any way, you know, we can pool it all together
21 so that we have as complete a record as possible to conduct
22 discovery.

23 THE COURT: But the trial record is not the problem
24 here. The problem here is what happened in the
00:21 25 preparation --

1 MS. STEINBACK: Correct.

2 THE COURT: -- if it is a problem. So, what do you
3 think the Rangers did that might have any --

4 MS. STEINBACK: Well, it's my understanding, Judge,
00:22 5 that the Rangers were in charge of the investigation. And,
6 again, this is information -- I can't tell you exactly
7 what --

8 THE COURT: If they were there and they acted
9 like --

00:22 10 MS. STEINBACK: -- exactly, what each specific
11 defendant did.

12 THE COURT: They're very good and they don't suffer
13 fools gladly.

14 MS. STEINBACK: But all of these claims, as you
00:22 15 will see in our complaint -- each claim is pled against each
16 defendant acting individually and jointly in the conspiracy
17 and we do have a conspiracy claim.

18 THE COURT: I know, but the conspiracy claim has to
19 be to do something, and a conspiracy to be stupid is not
00:22 20 actionable.

21 MS. STEINBACK: Correct. We're not alleging
22 negligence here.

23 THE COURT: Well, but you have to willfully,
24 knowingly and intentionally join a conspiracy to do
00:23 25 whatever -- I mean, the problem is, so far what I have

1 heard, is we're back to Pikett and his unreliable theory of
2 dogs and underwear.

3 MS. STEINBACK: Well, it's not just Pikett, though
4 Pikett is certainly a component of it. We are alleging in
00:23 5 this case, as in the other case, that it was well known that
6 these dog scent lineups were a fraud and that they were used
7 knowingly for the purpose of implicating a suspect. In this
8 case they had identified a suspect, Richard Winfrey, Jr.
9 They didn't have anything attaching him to the crime other
00:23 10 than --

11 THE COURT: -- his family.

12 MS. STEINBACK: Correct. Well, they identified
13 three suspects and they didn't have any physical evidence
14 tying Richard --

00:23 15 THE COURT: They don't have to have physical
16 evidence. I'm sorry. This is not -- what is that? CSI
17 Miami? Prosecutors live in fear today that the jury is
18 going to want to know why they didn't do spectrographic
19 testing of shoe soles that they found in the dump or
00:24 20 something because they're always doing that.

21 But what we have is an investigation by the
22 San Jacinto County Sheriff assisted by the Rangers,
23 apparently.

24 MR. PRICE: It's the other way around, Judge. It's
00:24 25 the Rangers assisted by the San Jacinto County Sheriff.

1 THE COURT: Why were the Rangers involved?

2 MR. PRICE: They were called in on the day the body
3 was discovered. They were there that day.

4 THE COURT: Who called them?

00:24 5 MR. PRICE: Sheriff Rogers. Yes. That's right.

6 THE COURT: Somebody has got to call them.

7 MR. PRICE: I am just trying to remember if it
8 was -- I believe it was Sheriff Rogers.

9 THE COURT: All right. In the process of that
00:25 10 investigation they used Pikett's dog business. Half the
11 time it identified Winfrey. Half the time it didn't.
12 Right?

13 MS. STEINBACK: No. It consistently identified
14 Winfrey even when the scent was not --

00:25 15 THE COURT: No. That's a fifty-fifty. We know
16 that one of the things was a misidentification.

17 MS. STEINBACK: Oh. Sure.

18 THE COURT: In one it identified him. The other it
19 identified him as somebody entirely different.

00:25 20 MS. STEINBACK: Correct.

21 THE COURT: So, I call that not an identification.

22 MS. STEINBACK: Okay.

23 THE COURT: When the victim says it was a 6'3"
24 black man and they identify him in the lineup, there's
00:25 25 something wrong, you know.

1 MS. STEINBACK: Right.

2 THE COURT: So, that's what we have.

3 And you say they had no other evidence, but we
4 can get, presumably, what was presented to the grand jury.
00:26 5 Right?

6 MR. PRICE: Well, I don't think that I'm in the
7 position -- I don't think that I have the power to compel
8 that, Judge.

9 THE COURT: Well, I do. That's not a problem. I'm
00:26 10 not worried about any of these people.

11 So, the information that produced the
12 indictment is documented. Isn't that what we have to go on?
13 Because it doesn't matter how many stupid things they did if
14 they couldn't use them. Let's assume that Duff and Huff got
00:26 15 out an Ouija board. I don't think that's very reliable, but
16 if they don't show the Ouija board evidence to the grand
17 jury it cannot have been a factor in the indictment. Right?

18 MS. STEINBACK: Sure.

19 THE COURT: So, I think we need to know is what the
00:27 20 district attorney presented to the grand jury and work back
21 from there to see whether any of that was something that was
22 done illegally. Doesn't that make sense?

23 MS. STEINBACK: Sure.

24 THE COURT: You just want to go home.

00:27 25 MR. MORSE: I'm enjoying it.

1 THE COURT: All right. Do you want to talk to
2 the -- Doesn't the district clerk have the Ranger records?

3 MR. PRICE: Beg your pardon, Judge?

4 THE COURT: The district clerk has --

00:27 5 MR. PRICE: I assume that, but I have not talked
6 with her to know what in fact they have. What she has told
7 me is that anything that she received pursuant to the order
8 of expunction she's got locked in a cabinet where nobody can
9 get to it.

00:28 10 THE COURT: All right. Well, I think, then, I need
11 to order a subpoena to the district clerk for those things
12 gathered in response to the expunction order in the original
13 case materials.

14 Where is all the records for the other two
00:28 15 Winfreys?

16 MR. PRICE: I know that -- I say that. I believe
17 that Mr. Petix has a big rolling cart that has the physical
18 evidence that was used in the trial -- well, the physical
19 evidence, the transcripts and other matters that were used
00:29 20 in the trial of Senior and Megan. I have -- The only
21 knowledge that I have of the contents is what I can glean
22 from the court of appeals opinion affirming the conviction
23 of Richard Sr., and it talks in some great detail about the
24 number of witnesses that were interviewed, the number of
00:29 25 suspects and -- There was a lot of work done, Judge, to

1 pursue other suspects as well.

2 THE COURT: All right. Well, do you want to look
3 at all that stuff?

4 MS. STEINBACK: You know, part of our allegations
00:29 5 for the reckless investigation claim is that there wasn't
6 work done to pursue other suspects; and, so, that will be a
7 part of our discovery, Judge.

8 THE COURT: Well, there was because they got
9 convictions on two other people. That they didn't do
00:30 10 anything other than pick on Little Richard is clearly wrong.

11 MS. STEINBACK: Sure. But, I mean, aside from the
12 Winfrey family, that's correct.

13 THE COURT: Why would they have to go bug the
14 Fergusons up the road from the Winfreys if they think the
00:30 15 Winfreys did it?

16 MS. STEINBACK: Because there were other suspects
17 who we allege had motives to commit the crime far more than
18 the evidence that was presented against the Winfreys.

19 THE COURT: Except the evidence was sufficient
00:30 20 against two of them. So, how can that be vexatious
21 prosecution and they get convictions and an acquittal
22 showing that jurors in San Jacinto County are not hand
23 maidens to the prosecution?

24 MS. STEINBACK: And this may be a little bit beyond
00:30 25 my expertise and perhaps you're more familiar with this,

1 Mr. Morse, because you are more involved in the cases. But
2 it's my understanding that the other two Winfreys are also
3 claiming innocence and --

4 THE COURT: Ma'am, Texas has got 165,000 people all
00:31 5 of whom are claiming innocence.

6 MS. STEINBACK: And as we see on the front pages of
7 the *Houston Chronicle* some of them are innocent.

8 THE COURT: Some of them might be. But a claim of
9 innocence is not sufficient to do anything. They claim they
00:31 10 were innocent all the way through the trial. The jury came
11 to a different conclusion. At least on one of them the
12 courts of appeals has -- not that I have any stake in the
13 courts of appeal. Pikett's dog sniffing is probably more
14 reliable than courts of appeals. But that's where it goes.
00:31 15 So, whether they're right or wrong I don't know, but it
16 cannot have been wrong to focus on the Winfrey family with
17 the information that we have now. You just can't. Is there
18 another Winfrey out there?

19 MR. PRICE: Not that I know of.

00:32 20 MS. STEINBACK: There is one, the mother, and
21 another sister who is now deceased, but --

22 THE COURT: So, Megan had a sister at the time?

23 MS. STEINBACK: That's correct.

24 THE COURT: Did they investigate the mother and the
00:32 25 other sister?

1 MS. STEINBACK: I believe the mother and not the
2 sister.

3 THE COURT: How old is the sister?

4 MS. STEINBACK: I'm not entirely sure. I think she
00:32 5 was in her early 20s.

6 THE COURT: She might not have been there.

7 MS. STEINBACK: She was -- The whole family lived
8 together is my understanding.

9 THE COURT: What else do you think they did wrong?

00:33 10 MS. STEINBACK: Well, we allege that they used
11 testimony that they knew was false, but they coerced a
12 jailhouse snitch into implicating Richard Winfrey, Jr.

13 THE COURT: Do you really think that all nine or
14 ten of these people you have named got together and beat on
00:33 15 the courthouse snitch?

16 MS. STEINBACK: I don't know which of them did,
17 Your Honor.

18 THE COURT: You don't know that anybody did.

19 MS. STEINBACK: Well, according to testimony he
00:33 20 provided and letters that he wrote to Richard Winfrey, Jr.'s
21 mother he alleged that they did and he recanted.

22 THE COURT: And what was he in jail for?

23 MS. STEINBACK: I can't tell you that right now,
24 Your Honor, but I can --

00:33 25 THE COURT: Do you have his criminal history?

1 MS. STEINBACK: I believe we do. I just don't know
2 it off the top of my head.

3 THE COURT: Get it to me.

4 MR. PRICE: Well, Judge, there's a problem there
00:34 5 and I'll be glad to do whatever you tell me to do. The
6 problem that I have with the allegation -- and, again, I am
7 limited to the documentation that's available to me and that
8 documentation -- in fact, there are two informants whose
9 names surface in connection with the investigation of
00:34 10 Mr. Burr's murder. One was Richard, Jr. -- I mean, Richard
11 Sr., was in jail for another offense and then later got out
12 of jail before the murder of Mr. Burr.

13 After the murder -- and, again, I am doing my
14 best -- I believe that what I am telling you is correct,
00:34 15 Judge, but -- After he got out of jail it's my understanding
16 that someone who had been in a cell with Senior during his
17 pre-offense incarceration had -- Senior had said something
18 to the effect that he had killed Murray Burr and that his
19 children had -- There was testimony that from time to time
00:35 20 the children would go visit Murray Burr at his home before
21 the offense. And this jailhouse informant stated that while
22 he had been in jail with Richard, Sr., Richard, Sr., said
23 that he had killed Murray Burr and his children had opened
24 the door for him to get in. I believe that's what it says.
00:35 25 I should have brought -- I have got the redacted police

1 report, but a statement was given. That person called from
2 the jail and he said, "I have something that you need to
3 know about." Nobody went to him to find it. He made a
4 voluntary --

00:36 5 THE COURT: Okay.

6 MR. PRICE: Then after that there is --

7 THE COURT: So, his roommate volunteered it?

8 MR. PRICE: Yes. And then there was another
9 informant that came forward later on that I believe

00:36 10 testified that Junior had told him something about Junior's
11 own involvement. I believe that that statement may have not
12 been allowed into evidence at the trial.

13 Am I getting this right, Randy?

14 Or, Shanna, do you know that?

00:36 15 I believe that that's what the consolidated
16 peace report shows or maybe someone told me that, that
17 that's one of the reasons that Winfrey was acquitted, was
18 because a statement that was allegedly made by Junior to
19 someone else was not allowed in evidence at the trial.

00:37 20 THE COURT: He was acquitted because the evidence
21 didn't convince the jury. If the judge didn't let it in it
22 probably shouldn't have come in. Now, I don't know who this
23 other person was.

24 Why do you think that the information was
00:37 25 coerced?

1 MS. STEINBACK: Well, one, because our client
2 didn't do the murder for which he was charged.

3 THE COURT: Well, that doesn't mean anybody beat on
4 the courthouse liar.

00:37 5 MS. STEINBACK: Sure. And, second, because the
6 individual who had given the testimony that he later
7 recanted said it had been coerced. And I believe, though
8 I'm not sure, so I will go back and look for you -- I
9 believe he was involved -- I don't know the extent of his
00:37 10 criminal history or what he was in jail for at the time, but
11 I believe it has something to do with a custody dispute.
12 So, again, I will look into that for you.

13 MR. PRICE: This is all complete news to me, Judge.

14 THE COURT: Do you say the snitch wrote the mother?

00:38 15 MS. STEINBACK: I believe that's true.

16 THE COURT: Do you have that letter?

17 MS. STEINBACK: I'm not sure.

18 THE COURT: Get it, I mean, if it exists -- since
19 she's got to produce everything. Everybody in the family
00:38 20 has to produce everything they have that has anything to do
21 with the three cases, because I don't want the mother
22 deciding, 'Well, this has to do with my husband's case and
23 not my son's case.'

24 MS. STEINBACK: Sure.

00:38 25 THE COURT: So, anything, especially about this

1 guy. I don't know that y'all are talking about the same
2 person.

3 MR. PRICE: Nor do I, Judge.

4 MS. STEINBACK: We may not be, Judge.

00:38 5 THE COURT: Yeah. So, can you get his criminal
6 history or do I need to order --

7 MR. PRICE: If she will tell me -- Well, I don't
8 know whether she will tell me --

9 THE COURT: No. Your guy, the one you just
00:38 10 described.

11 MR. PRICE: Well, I don't know his name. The
12 second guy?

13 THE COURT: Well, I know, but you can look it up.

14 MR. PRICE: If it's still in the record. I think I
00:39 15 can, Judge.

16 THE COURT: It has to be in the record.

17 MR. PRICE: The record is sealed.

18 THE COURT: Well, it's not going to be sealed for
19 long.

00:39 20 MR. PRICE: Right.

21 THE COURT: They didn't discuss this business --
22 The first guy you mentioned ratted out the father.

23 MR. PRICE: That's right. And I can identify him.

24 THE COURT: Get his criminal history, who he is,
00:39 25 his resume, whatever you have.

1 And then for the second guy do what you can to
2 find out who that was. I mean, that he snitched should be
3 in his criminal records, not in Winfrey's. It should be in
4 both. The guy who implicated the son -- It should be both
00:39 5 in the son's file and in the other guy's because he was a
6 defendant in something. So, wouldn't you put it in both
7 cases' investigatory file?

8 MR. PRICE: I will find out what I can about the
9 second guy, Judge.

00:40 10 THE COURT: The first one, too.

11 MR. PRICE: Right.

12 THE COURT: And then we need -- if there is a
13 document, they need it immediately and they'll find out
14 whatever they can about that guy. Because there may be a
00:40 15 third snitch. Jailhouses are full of snitches.

16 And the same theory against Fort Bend and the
17 Fort Bend Sheriff, that they shouldn't let Pikett do what he
18 does?

19 MS. STEINBACK: Correct, Your Honor.

00:41 20 And just so you know the procedural posture of
21 the case, both Fort Bend County and the Fort Bend County
22 defendants and the San Jacinto County and their defendants
23 have answered the complaint. The Texas Rangers have filed a
24 motion to dismiss which is fairly similar to the one that
00:41 25 you have already ruled on and rejected in the other dog

1 sniff case that we have, *Curtis*. It's --

2 THE COURT: There were no Rangers in that one.

3 MS. STEINBACK: That's correct. But it's talking
4 about the pleading standard for qualified immunity. I think
00:41 5 it's actually slightly different. And we can discuss it
6 here if you'd like or we can submit --

7 THE COURT: Is it any good?

8 MS. MOLINARE: I think it's pretty good. I don't
9 know that it's my best.

00:42 10 THE COURT: The intentional infliction of emotional
11 distress is subsumed in malicious prosecution. That's one
12 of the damages in malicious prosecution. There's no
13 independent claim.

14 And the abuse of process and malicious
00:43 15 prosecution is essentially the same. The conspiracy was to
16 do those things; so, basically, we have got a malicious
17 prosecution case.

18 Is this an F7 on your computer (indicating)?

19 MS. MOLINARE: No.

00:43 20 MR. PRICE: Well, Judge, since you mentioned
21 "seven", although we haven't filed a motion to dismiss and
22 have not formally filed a motion for a Rule 7 reply -- you
23 know, I won't speak for Randy, but I am in the same boat, is
24 that allegedly all defendants did everything and --

00:43 25 THE COURT: That's a problem.

1 The claim under 1983 is essentially malicious
2 prosecution. It is a violation of due process to paying
3 people on faked evidence. I think that's clearly
4 established.

00:44 5 Don't you?

6 MS. MOLINARE: That malicious prosecution exists as
7 a claim?

8 THE COURT: That under the Constitution it's a
9 violation of due process to fake evidence and hang somebody.

00:44 10 MS. MOLINARE: Yes. I would agree.

11 THE COURT: I think it's amazing the Supreme Court
12 hasn't ruled that police officers only are responsible for
13 clearly established constitutional principles, but everybody
14 else is responsible for all the rules, clearly established
00:45 15 or not.

16 So, I think we have a tort, malicious
17 prosecution and the Constitution, government irregularity
18 claim.

19 The trouble is I don't know what the Rangers
00:45 20 did exactly, because it makes a big difference on whether
21 they just hired a goofball or they said, 'We can't find
22 anything; so, let's hire this lying scum bag.' Those are
23 different concepts.

24 MS. STEINBACK: Sure.

00:45 25 THE COURT: And I don't think it's clear from the

1 complaint that the Rangers -- what they did that would
2 amount to a willful, intentional transition into arbitrary
3 government.

4 MS. STEINBACK: Like I say, just to quickly
00:46 5 respond, Your Honor, that it's really no different than the
6 other case we have before you. I mean, we know that this
7 was a case that -- or this investigation was -- whether it
8 was led by the Rangers and had San Jacinto County Sheriff's
9 Office employees working alongside them or vice versa, we
00:46 10 allege that they knew that the lineup was a fraud and that
11 they --

12 THE COURT: I understand your position about Pikett
13 and -- The fact that it turns out to be bad is not the same
14 thing as violating the Constitution. And, of course, you're
00:46 15 not supplying me the data on all the times Pikett has found
16 the actual culprit. And if you took lie detectors, my guess
17 is you'd have a 35, 40 percent failure rate even properly
18 administered, which most of them aren't. It just isn't
19 exact.

00:47 20 It's got witnesses and all the rest of the
21 stuff. So, there's got to be more than you disagree with
22 the investigative technique. I'm not going to assume that
23 it is so deficient that its mere use is equivalent to a
24 railroading. It might be.

00:47 25 MS. STEINBACK: Sure. And I think I understand

1 what you --

2 THE COURT: And then you have got to get who hired
3 Pikett, who did supervise him. The fact that the Rangers
4 were in charge in the investigation may not mean they were
00:48 5 in charge with the administration of them. Many times he
6 said, 'Go get all the information and do all this stuff and
7 let us know. We're going to go do something else.' You
8 know there are not many of them, but there are a lot of
9 deputy sheriffs.

00:48 10 And I need to know.... What's his name? So,
11 is it your understanding that Lenard Johnson was the actual
12 person who did the work there at San Jacinto County?

13 MS. STEINBACK: I believe that Lenard Johnson and
14 Lacy Rogers were the two individuals that we know thus far,
00:49 15 but there may be more, who were involved in the
16 investigation.

17 THE COURT: If there were others why aren't they on
18 there?

19 MS. STEINBACK: We put "as yet unknown".

00:49 20 THE COURT: I know and that doesn't help me.
21 Shortly after Bevins sued four unknown DEA agents, they knew
22 who they were. The DEA just wouldn't tell them in advance.
23 But your client went through the whole investigation. He
24 knows who he talked to. And I am going to make them give
00:49 25 you the records. I am just worried about what Lenard

1 Johnson did. You named him, so you must know what he did.
2 What did he do?

3 MS. STEINBACK: Sure. Well, you know, just to be
4 very candid and because we haven't had full discovery yet, I
00:49 5 don't know how many --

6 THE COURT: Why did you name him?

7 MS. STEINBACK: Because he and Lacy Rogers were
8 both involved. We know that they spoke with Richard
9 Winfrey, Jr., and that they were involved in the
00:50 10 investigation.

11 THE COURT: But that doesn't make them responsible
12 for violating his rights. The newspaper reporters talked to
13 Mr. Winfrey, didn't they? Are they part of the conspiracy?

14 MS. STEINBACK: But they weren't involved in the
00:50 15 investigation that resulted in his arrest.

16 THE COURT: But "involved" doesn't do it, ma'am.
17 It's got to be they did something wrong.

18 MS. STEINBACK: Sure. And I will just point
19 here --

00:50 20 THE COURT: You know, if Winfrey jaywalked there
21 would probably be seven officers show up for the arrest
22 because, you know, the morning donuts have all been sold out
23 and there's nothing else going on in town.

24 MR. PRICE: Judge, could I just also add that she
00:50 25 says that they haven't done discovery, but there was a

1 criminal proceeding. He had a lawyer. They discovered --

2 THE COURT: Criminal file.

3 MS. STEINBACK: Sure. I mean, that's how we have
4 these names and, so --

00:51 5 THE COURT: I know. But those are names, not acts.

6 MS. STEINBACK: Right. And, Your Honor, I would
7 just point you to -- just to be clear, because I don't want
8 anybody to be mistaken. This isn't a case where we're
9 saying all these people are culpable for hiring this person
00:51 10 who conducted this lineup. I mean, you know, in Plaintiff's
11 complaint, paragraph 4, "Following the dog scent lineup," it
12 says, "in an attempt to ensure that Plaintiff was convicted
13 despite his innocence, Defendants fabricated evidence...to
14 corroborate the sham findings of the dog scent lineups."

00:51 15 MR. PRICE: And that's a conclusory pleading.

16 THE COURT: I'd like to pretend that I'm in charge
17 here. I need my Boy Scouts back.

18 MS. STEINBACK: We heard about that.

19 THE COURT: All right. The problem with it --
00:52 20 Anyway, that is a generalization. It's like saying they
21 violated his due process. What evidence did they fabricate?

22 MS. STEINBACK: They coerced testimony --

23 THE COURT: No. Fabricate evidence. I understand
24 the thing about the snitch, but what did they fabricate?

00:52 25 MS. STEINBACK: Well, that is presenting fabricated

1 evidence.

2 THE COURT: I understand, but I know about that.

3 So, is that what this is about?

4 MS. STEINBACK: Sure. This is about using --

00:52 5 THE COURT: Okay. Now, earlier you told me you

6 didn't know who talked the weasel into being a bigger

7 weasel, who turned out to be an unreliable weasel. You

8 know, Huey long, when he was governor, said, "An honest

9 politician in Louisiana is one who when bought stays

00:52 10 bought."

11 So, he didn't stay coerced. Can you explain

12 that?

13 MS. STEINBACK: Well, he did recant.

14 THE COURT: No. If he was under fear of bodily

00:53 15 injury or something why did that fear go away?

16 MS. STEINBACK: I don't know, Your Honor.

17 THE COURT: So, he's told two stories and you want

18 me to believe one and not the other. Why should we believe

19 your choice instead of his choice? That's the trouble with

00:53 20 liars. And he can be lying both times. He might not have

21 known what he said, but he might have known that Winfrey did

22 it. I don't know.

23 So, who coerced him? You don't know. All we

24 have is an unsworn statement by a guest of San Jacinto

00:53 25 County.

1 MS. STEINBACK: We may have more, Your Honor. I
2 don't know what the police records reflect, so I --

3 MR. PRICE: He wasn't even a guest of San Jacinto
4 County, Judge. I believe that the first one was in
00:54 5 Montgomery County and I think the other one may have been at
6 TDC.

7 THE COURT: All right. I mean, that's the trouble
8 with the motion to dismiss business, is she has a legitimate
9 problem because she's dealing with governments that have
00:54 10 schizophrenic authority; and, so, San Jacinto County is not
11 responsible for what happens at Montgomery County Jail
12 unless they go down there and beat it out of him. If it
13 happened in the state prison they'd have no clue.

14 So, your client has to get you everything he
00:55 15 knows about every conversation with that guy and get to all
16 of them and then you find out who it is, because it may be
17 he never was in prison.

18 But, as we sit here today, you do not know
19 that the Rangers coerced anybody to do anything?

00:55 20 MS. STEINBACK: I apologize, Judge. Off the top of
21 my head, I just don't remember who spoke with the person
22 that we are alleging was coerced into giving false testimony
23 against Richard Winfrey, Jr.

24 THE COURT: Who says he was "talked to by".

00:55 25 MS. STEINBACK: Correct. We are alleging.

1 THE COURT: I want to know -- Your client has been
2 in contact with this guy and he knows who he says he talked
3 to. Right?

4 MS. STEINBACK: Sure.

00:56 5 THE COURT: And I don't believe he says that all
6 these guys came to him.

7 MS. STEINBACK: And, Judge, you know, just to
8 remind you, the procedural posture of this, the Defendants
9 are fully within their capability to admit or deny these
00:56 10 allegations and, in fact, these two sets of defendants have.
11 So, to the extent that I can't tell you right now whether it
12 was Defendants Huff and Duff or whether it was Defendants
13 Johnson and Rogers, presumably those defendants, since it
14 didn't happen so long ago, are able to recall whether or not
00:56 15 they --

16 THE COURT: I understand, but Winfrey is bringing
17 the claim.

18 MS. STEINBACK: Right.

19 THE COURT: Their job is to respond to his
00:57 20 assertions, not to make his case for him. They don't work
21 for Winfrey.

22 MS. STEINBACK: Sure. Oh, absolutely. And I'm not
23 asking them -- Yeah, I don't presume any of them will admit
24 to it, but they can then deny and then we continue on from
00:57 25 there.

1 THE COURT: Every serious police brutality case I
2 have had has been cracked because of an honest policeman who
3 wouldn't follow the story.

4 MS. STEINBACK: We need more like that in Chicago,
00:57 5 Your Honor.

6 THE COURT: There are many levels of integrity that
7 could be added to Chicago.

8 All right. But let's get -- I mean, since
9 we're dealing from the secret records -- so are you -- I
00:57 10 don't want to rule on the motions yet. I want us to figure
11 out -- You know, it's her job to see if there's a case from
12 the facts. She's got a client who says that he says he was
13 coerced and she already knows about Pikett, and she don't
14 like him. So, we're going to -- Pikett is easier.

00:58 15 So, let's get -- Do you have any idea on
16 Winfrey's trial and grand jury -- how bulky it is?

17 MR. PRICE: I know that -- I saw the pushcart that
18 had some of the trial evidence for Senior's trial and it was
19 like one of these two-level deals and it's -- you know, it
00:58 20 was a big cart. There was a lot of documents on it. They
21 were in big cardboard boxes, not banker boxes. There were
22 about four of those.

23 Judge, can I ask a question?

24 THE COURT: Okay. I'm just -- Could you just
00:59 25 gather all at your office? Because it's too much,

1 reasonably.

2 MS. STEINBACK: Sure.

3 MR. PRICE: It's not in the County's possession,
4 Judge. It's in the DA's possession. Now, we could

00:59 5 probably --

6 THE COURT: I am going to order him to produce it.

7 MR. PRICE: Can we have it produced in his office?

8 THE COURT: Nobody wants to go up there.

9 MR. PRICE: He won't even let me take his original
00:59 10 open records responses to things, Judge. He says, "If you
11 want to look at it you come up here." Now, I know I don't
12 have the authority that you have down here.

13 THE COURT: Maybe they would want to come down here
14 and talk to me. I don't know.

00:59 15 MR. PRICE: I think he's new in this office and he
16 is trying to be very conscientious.

17 THE COURT: Conscientious and recalcitrant are not
18 the same thing.

19 MR. PRICE: That's true.

01:00 20 THE COURT: Prosecution is the public record.

21 The daughter and the father -- there is no
22 reason for him not to produce that.

23 MR. PRICE: Well, I'm not a criminal defense
24 lawyer, Judge. Winfrey's case -- Senior's case is pending
01:00 25 before the court of criminal appeals; so, it's an active and

1 ongoing matter. So, all that stuff that was in the boxes
2 is --

3 THE COURT: Active and ongoing.

4 MR. PRICE: Active and ongoing lawsuit, not
01:00 5 investigation.

6 THE COURT: The record that is before the court of
7 criminal appeals has already been done and they don't care.
8 But if he doesn't want to produce the original so that it
9 can be in your office, in your custody and anybody can go
01:00 10 look at it and designate what they want copied, then I will
11 just order him to copy it for everybody, if he thinks he
12 needs to maintain custody of all those boxes and things. I
13 don't think Steinback wants to see anybody's shoes or
14 anything.

01:01 15 MR. PRICE: If it's stuff that's in an evidence bag
16 that it's sealed and if it's something that the court of
17 criminal appeals should kick it back and it has to be
18 retried --

19 THE COURT: Physical evidence.

01:01 20 MS. STEINBACK: If it could just be made available
21 to us we could come and view it.

22 THE COURT: But that stuff, they can just take
23 pictures of it.

24 MS. STEINBACK: Sure. Yeah. Exactly.

01:01 25 THE COURT: Muddy shoes and shell casings and stuff

1 like that, just take pictures of that, because it will be
2 discussed in some papers, and then copy the papers.

3 MR. PRICE: Okay. So, you want him --

4 THE COURT: No. I want her to send the
01:01 5 photographs, whatever it is they're talking about, because
6 it just makes it more interesting.

7 MR. PRICE: Oh. So, they can photograph --

8 THE COURT: -- anything in a bag.

9 MR. PRICE: -- in a bag and leave the original
01:01 10 stuff there and then just have the photos here? Okay.

11 THE COURT: And then he needs to copy all the
12 documents that we need. The district clerk -- I don't know
13 what she wants to do about that, but.... Were there
14 physical exhibits at Winfrey's trial?

01:02 15 MR. PRICE: Oh, yeah. Well, I know there were at
16 Senior's trial.

17 THE COURT: No. In Junior's. I mean, why don't
18 they go by "Lynn"? That's a perfectly good name. That's
19 just crazy.

01:02 20 MR. PRICE: I do not know -- I have no idea what
21 the physical evidence is for Junior's trial.

22 THE COURT: Well, find out. She'll talk to you,
23 won't she?

24 MR. PRICE: Oh, yeah. Absolutely.

01:02 25 THE COURT: A lot of people don't want to talk to

1 you.

2 MR. PRICE: My little brother for sure.

3 THE COURT: Little brothers are great people.

4 Talk to her and see if there are bags of stuff

01:02 5 and then we'll just take pictures of them and then,

6 otherwise, we'll get at least three copies and whatever the

7 paper is. But, most of all, I want young Winfrey's grand

8 jury. That seems to me to be the key of a wrongful

9 prosecution.

01:03 10 MR. PRICE: Judge, can I just ask a question about

11 that? Because this is obviously going to be -- is going to

12 involve some costs. And I understand Plaintiff's need to

13 have some information before responding to a motion to

14 dismiss.

01:03 15 I guess, from my client's perspective and

16 especially in cases against the individual peace officers, I

17 mean, you know, there's no pattern, practice or custom here

18 and there is none alleged. But with regard to the

19 "individual capacity" claims I believe the evidence is that

01:03 20 none of my clients participated in the collection of dog

21 scent evidence --

22 THE COURT: And I am going to just assume that.

23 She just needs to know that. It's impossible to tell when

24 people say, 'We have ongoing investigations and it's been

01:04 25 sealed and we can't do this.' Somebody has got -- She's

1 talked to the people who will talk to her. And, again, not
2 many people want to talk to her either. And, so, having
3 done that, I am going to let her have a little
4 information --

01:04 5 MR. PRICE: Well, what I was going to suggest,
6 Judge, is I have got -- as I told you, the murder
7 investigation was a consolidated report and, so, I have got
8 a stack of documents about this thick that is the
9 investigative report. I assume that she already has it --

01:04 10 THE COURT: Do you have it?

11 MR. PRICE: -- because he was tried. He had a
12 lawyer. So, I don't know why this is a mystery, why she's
13 claiming that she doesn't have this information when he
14 tried and she was entitled to discovery.

01:04 15 THE COURT: Do you?

16 MS. STEINBACK: Well, first, we're not their
17 criminal defense attorney.

18 THE COURT: I know, but it's the same person.

19 MS. STEINBACK: Oh. Sure. Sure. Sure.

01:05 20 Absolutely.

21 THE COURT: Winfrey has to -- He was there. The
22 law requires him to be there. He had a lawyer. He has a
23 lawyer now. If the lawyers don't talk it's Winfrey's
24 problem.

01:05 25 MS. STEINBACK: Sure. No. But we do have

1 documents.

2 MR. PRICE: And what I will say, Judge, is that
3 there are supplemental reports in the consolidated police
4 report that say who did what. This isn't a mystery. I'll
01:05 5 be glad to give it to her again, but can I do that before we
6 do all this other stuff about --

7 THE COURT: Yes. All right. Let's start -- And
8 give it to the State because it doesn't --

9 MR. PRICE: I have already got it scanned, Judge.
01:05 10 I can send it to them on a CD.

11 THE COURT: But you retain the T-shirt and poster
12 rights to your CD.

13 Get that to them. You've got ten days to tell
14 me whether you still need -- I mean, I don't know that that
01:06 15 will help because we don't know how much of that was
16 presented to the grand jury.

17 MR. PRICE: But it will show, Judge, lack of
18 personal involvement.

19 THE COURT: I understand what you think it shows.
01:06 20 I am going to let them read it and hope that I don't have
21 to.

22 Get it to everybody, and then after 10 days
23 they'll let me know whether they think they still need the
24 trial records, the grand jury record or anything else they
01:06 25 can think of.

1 MR. PRICE: And just to be -- so that I'm not later
2 understood to have said something -- Again, this set of
3 documents I have is the consolidated report that has all
4 mention of Richard Winfrey, Jr., marked out in black ink,
01:07 5 and it's my further understanding that if there are
6 documents in that that pertain specifically to Richard only,
7 that those are not in there, that they have been removed and
8 obliterated, according to their understanding. But I
9 believe that the documents that talk about the conduct of
01:07 10 the dog scent lineup and trail and then the collection of
11 evidence -- those are in documents that were pertinent to
12 both cases. So, you're going to find black marks where her
13 client's name existed.

14 MS. STEINBACK: That's fine, Your Honor. We'll
01:07 15 just assume that wherever there is a redaction mark that
16 says "Richard Winfrey, Jr."

17 THE COURT: His criminal lawyer should not have a
18 redacted copy.

19 MS. STEINBACK: Right.

01:07 20 THE COURT: So, now you can compare.

21 MS. STEINBACK: Sure. And in terms of the reports
22 that were obliterated that dealt specifically with Richard
23 Winfrey, Jr., would it be possible for you to produce the
24 documentation he made of what those reports were?

01:08 25 THE COURT: But they will be in the ones from his

1 criminal lawyers.

2 MS. STEINBACK: Just to make sure that we have a
3 complete set.

4 THE COURT: But you have one and then you will have
01:08 5 one and they'll be missing.

6 MS. STEINBACK: I just want to make sure that what
7 we believe is a complete set actually is. So, I just want
8 to make sure that nothing falls through the crack.

9 THE COURT: Read your set and read his set and
01:08 10 then --

11 MS. STEINBACK: Okay. And, Your Honor, in terms of
12 the ten days when do you envision that deadline? And I only
13 ask because I am leaving town on Saturday for ten days.

14 THE COURT: Where are you going?

01:09 15 (Off-the-record discussion)

16 MR. PRICE: I will say that I have got that file
17 scanned, but they haven't got it Bates-numbered yet. So, if
18 I could get maybe two days to get it Bates-numbered just for
19 ease of use. Is that acceptable?

01:10 20 THE COURT: Well, when are you going to be back?

21 MS. STEINBACK: I return on August 9th.

22 THE COURT: All right. So, get it read and let me
23 know by August 20th.

24 MS. STEINBACK: Okay.

01:10 25 THE COURT: And the same thing for anybody else.

1 And the other stuff -- I mean, you may discover in going
2 through all this that there are other sources, but the
3 attorneys that seem to exist are in the grand jury
4 testimony, the trial record and the record of the father and
01:11 5 daughter trial.

6 MS. STEINBACK: Does the Texas Department of Public
7 Safety have anything different? I don't know if the reports
8 of San Jacinto are going to have --

9 THE COURT: Well, they'll have a file, but any
01:11 10 reports would have been sent to the DA for prosecution. Did
11 the Rangers testify?

12 MS. STEINBACK: I don't know.

13 MS. MOLINARE: I don't know either.

14 MS. STEINBACK: Could we request it --

01:11 15 THE COURT: Get their file.

16 MS. STEINBACK: Okay.

17 THE COURT: Get all that stuff and just hold it
18 until we have looked at that report. They need to have some
19 facts.

01:12 20 And you all, too. If you think of something
21 you need from somebody, including the Plaintiff, then let me
22 know on the 20th.

23 MR. PRICE: We'd just like a cleaned-up pleading so
24 we can file a 12(b)(6) motion or a Rule 56 motion on stuff
01:12 25 that's specifically pled enough to do so.

1 THE COURT: I understand.

2 MS. STEINBACK: So, is the Texas Rangers' motion
3 stayed pending this or --

4 THE COURT: Yes.

01:12 5 MS. STEINBACK: -- how do you want it?

6 THE COURT: But don't respond. I want to make sure
7 that you have mastered what facts are reasonably available,
8 including what's in his copy of his criminal stuff because
9 that's not sealed.

01:12 10 So, I need names, date and places. I
11 especially need the stuff about the coerced testimony
12 because that's not going to be in any of his stuff.

13 MR. PRICE: And I guess, Judge, since my copy has
14 been redacted, if I could get a scanned copy of her criminal
01:13 15 trial I'd like that, too.

16 MS. STEINBACK: Sure.

17 THE COURT: So we're both looking at the same
18 comparison.

19 Production is easy. Getting y'all to actually
01:13 20 read it is the hard part.

21 All right. Anything else we can usefully do?

22 You represent Fort Bend?

23 MR. MORSE: Yes, sir.

24 THE COURT: Does Pikett still work there?

01:13 25 MR. MORSE: He didn't have much work after the

1 Innocence Project came down on his -- what he does for a
2 living. He was there for probably a good year not doing
3 much and he was eligible for retirement. He was not asked
4 to leave, but he's retired and he is a reserve just so that
01:14 5 he is in good standing with us.

6 THE COURT: Okay.

7 MR. PRICE: Judge, that raises one thing, one other
8 piece of information that I don't know. She's made these
9 allegations that it was well known in the community that
01:14 10 Mr. Pikett was -- Now, I believe the record is going to show
11 that my folks didn't hire Mr. Pikett or participate in it,
12 but if she's going to try to tar them with knowledge that he
13 was unreliable I would like to see a pleading about what
14 information she claims was well known and when it was
01:14 15 published, because I believe that that may have happened
16 after the --

17 THE COURT: Isn't that in the other case? In the
18 other case didn't you list a whole bunch of witnesses and
19 said that were published? Or am I --

01:14 20 MS. STEINBACK: In the other case a senior
21 prosecutor in the Harris County DA's Office had informed the
22 Houston Police Department, which is separate --

23 THE COURT: There weren't any Wikipedia blogs or
24 anything about this? Because that's absolutely what I rely
01:15 25 on.

1 MR. PRICE: I mean, I just didn't know what we were
2 alleged to have allegedly known and when we were alleged to
3 have known it.

4 THE COURT: All right. Let's wait until you have
01:15 5 seen all these records. The "coerce" thing is new; so,
6 we've got to get some facts.

7 MS. STEINBACK: Thanks, Judge.

8 THE COURT: And what is Ms. Winfrey doing for a
9 living?

01:15 10 MS. STEINBACK: "Ms. Winfrey" being Megan Winfrey
11 or --

12 THE COURT: No. The mother.

13 MS. STEINBACK: -- the mother? I don't know that
14 she's employed, Your Honor. I'm not sure.

01:15 15 THE COURT: What's Megan doing? Isn't she --

16 MS. STEINBACK: Yeah. Exactly.

17 THE COURT: So, we'll hear from you all on the
18 20th. I will look at that and then do something arbitrary
19 and rule.

01:16 20 MS. STEINBACK: Thank you, Judge.

21 THE COURT: Thanks.

22 COURT REPORTER'S CERTIFICATE

23 I, BRUCE SLAVIN, certify that the foregoing is a
24 correct transcript from the record of proceedings in the
above-entitled matter, to the best of my ability.

25 s/Bruce Slavin
BRUCE SLAVIN, RPR, CM